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ABSTRACT

This handbook (prepared to assist charter school operators, state department of education personnel, and policymakers) reviews special education case law and legislation as well as pertinent issues that can guide charter school personnel, host or sponsoring districts, and state agency personnel in the implementation of special education in charter schools. An introduction describes the development of charter schools, the school choice movement, and the role of special education in charter schools. Following this overview, a brief history of special education is provided. The legal requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 are reviewed in a question and answer format. In the same format, issues are presented that charter schools should consider in the implementation of special education, including identification of students with special education needs; responsibility for serving students with disabilities; steps charter schools must take to ensure service are provided to students with low-incidence disabilities; funding services, transportation needs, personnel certification and waivers; and requirements for individualized education programs. A final section provides recommendations for charter school personnel in providing special education services and recommendations for state agency personnel in providing information and support to charter schools. Appendices include a list of additional sources of information and a glossary of terms. (CR)

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CHARTER SCHOOLS AND SPECIAL EDUCATION: A HANDBOOK

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ABSTRACT

Legislation providing for public charter schools has been passed in 25 states and the District of Columbia. Nearly 500 schools were open in the 1996-97 school year, each with an individual orientation and mission. Charter school personnel are generally responsible for all or nearly all programs and services provided by traditional public schools, including special education services. However, there is little information available for charter school personnel as they consider special education issues. Most charter school laws are not specific about special education, and provide little guidance for those operating a charter school or for the sponsoring entity or host district.

Several questions arise for charter school personnel as they implement special education in their schools. Who is responsible for serving students with disabilities who attend charter schools? How are special education services delivered? How do the funding mechanisms operate that allow for maximum financial support to charter schools or host school districts? The answers to these and other related questions will determine the programming direction for the charter school and ultimately affect how students receive special services.

This handbook has been prepared to assist charter school operators, state department of education personnel, and policymakers as they seek answers to these questions. Special education case law and legislation are reviewed as well as pertinent issues that can guide charter school personnel, host or sponsoring districts, and state agency personnel in the implementation of special education in charter schools. This document is intended to be an overview, and not a complete source for all requirements related to meeting the needs of students with disabilities in charter schools.

CHARTER SCHOOLS AND SPECIAL EDUCATION: A HANDBOOK

INTRODUCTION

Background

Charter schools are fast becoming the most visible form of school choice in the country. As of fall 1996, 25 states and the District of Columbia have passed charter school legislation. This legislation allows teachers, parents, community groups, business leaders, and others the opportunity to open a new public school, or convert an existing school, with some degree of independence from established school districts. There are many challenges to starting and maintaining a new school without the traditional infrastructure available through an existing school district or private school organization. One of the challenges is the implementation of special education services.

Consider the following possibilities:

- Staff at a newly opened charter school believe they can provide educational services to students with disabilities within the model they have designed without providing special education. Can they?

- The director of a newly opened charter school had been told the host district would provide special education services. How will the students with disabilities receive services and how will they be funded?

- Staff members of a charter school have followed procedures and have identified students in need of special services. How do they receive funding for these services?

- A parent requests additional services from a charter school and tells the school she will request a due process hearing to obtain the services she wants for her child. The charter school must obtain legal advice. Who is responsible for the fees? Is there another way to resolve the issue?

Each of these scenarios is a realistic possibility in a charter school. These situations can be difficult to manage if staff are unaware of special education laws and procedures, or if

they do not have the expertise for providing special services. Knowing what to expect and the questions to ask in the area of special education is essential for charter school serving students with disabilities.

The purpose of this handbook is to provide an overview of special education laws and issues for those currently operating a charter school, host or sponsoring school districts, and state departments of education.[1] Since charter schools are so new, this handbook is meant to provide a framework for those needing information about special education issues that impact on charter schools as they serve students with disabilities.

Charter Schools and the School Choice Movement

The first charter school opened in Minnesota in 1991. Since that time nearly 500 charter schools have opened in 16 states and the District of Columbia.[2] Charter schools join open enrollment, postsecondary enrollment options, second chance programs, and magnet schools in the menu of school choice options available across the country. Charter schools vary from other school choice options in that they allow interested individuals to open a new public school or convert an existing school to a charter school. These schools are usually financially and legally independent from a school district, although state laws should be consulted for specific status. There are a number of definitions that have been applied to charter schools. According to one frequently quoted source, a charter school is defined as:

> an autonomous educational entity operating under a charter, or contract, that has been negotiated between the organizers, who create and operate the school, and a sponsor, who oversees the provisions of the charter. Organizers may be teachers, parents, or others from the public or private sector; and sponsors may be local school boards, state education boards, or some other public authority. Provisions in each school's charter address such considerations as the school's instructional plan, specific educational results and how they will be measured, and management and financial plans (Mulholland & Bierlein, 1995, p. 7).

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[1]It is beyond the scope of this document to provide a detailed explanation of charter schools. An excellent source for that information is the recent book on the topic by Joe Nathan cited in the Bibliography, page 35.

[2]The variation in state laws has resulted in wide differences in the number of charter schools in each state. Eight states have chartered 95 percent of charter schools, while the remaining five percent are located in another nine states. The other eight states with laws have not chartered any schools as of the fall of 1996 (Dale, 1996).

Mulholland and Bierlein (1995) identify six desired outcomes of charter schools. These desired outcomes often become the rationale behind the legislation and application for a charter school. They include:

1) Enhanced educational choice options for students, parents, and teachers
2) Decentralization of educational authority
3) Results-based accountability
4) Availability within public education
5) New professional opportunities for teachers
6) More market-driven educational system.

Charter school laws vary in their strength affecting their defining characteristics. The strength of a charter school law is usually defined by the range of autonomy and availability of several criteria including number of schools allowed, variety of sponsors, variety of schools, availability of appeals process, availability of waivers, availability of start-up funds, and legal autonomy (Bierlein, 1996; Buechler, 1996).

There is wide variability in the law at this time with some states allowing unlimited numbers of charter schools, and other states restricting the number of possible schools to fewer than ten. Some states allow complete independence from a local school district, while others require local school board permission before a school can open. The variability in the laws means that charter schools operate differently depending upon the state legislation under which the charter schools are approved.

The orientation of charter schools also varies greatly. Some schools are designed for specific student populations, others provide a unique or specific curriculum, and others are designed with governance and parent involvement components that are integral to their mission. There are many examples of this variability within the charter school movement. Some schools are very traditional in their orientation providing a "back-to-basics" approach, while others have a focused curriculum such as conflict resolution and peace building in an urban environment, a Montessori education, or project-based learning. The wide range of thematic orientations present in charter schools is evidence of one intent of the movement which is to provide innovative curriculum for students and families who desire a specific type of educational environment.

Students attending charter schools are often as variable as the laws that govern the schools. Some charter schools are designed for a cross section of students similar to

traditional public schools, while others are focused on a unique population such as students who are deaf, gifted and talented, at-risk for school noncompletion, or learning disabled.

Charter Schools and Special Education[3]

One of the aspects of charter schools that is often cited as the most significant advantage is the right to operate without the burden of certain regulations. It is essential that everyone involved with charter schools understand that no exemption from any federal special education law or regulations, including Section 504 of the Rehabilitation Act of 1973, Title II of the Americans With Disabilities Act (ADA), and the Individuals With Disabilities Education Act (IDEA), can be granted. A state may waive portions of its own state laws and regulations or the requirement to abide by school district regulations, but no waiver is possible from federal requirements pertaining to students with disabilities.

With the wide range of students and school orientations, how do the charter school laws address special education and serve special needs populations? A review of the charter school laws reveals very few special education guidelines for individuals considering sponsoring or applying for a charter school. Most states specify that schools may not discriminate against students with disabilities, and some states require that a certain number of charter schools serve at-risk student populations; but, there is little to no guidance in charter school legislation on how special needs students should be served once a charter school is established.

Since charter schools are so new, there are few research findings to inform those interested in the operation of charter schools and the implementation of special education services. The most closely related research is from the Enrollment Options Project at the University of Minnesota. By state law, students in Minnesota public high schools have a variety of choices: juniors and seniors in high school can take a course in any college in the state and receive credit; dropouts and students at risk of dropping out can apply to enroll at any regular or alternative public school in the state, or any private alternative school that contracts with a public school district. Researchers have examined these school choice policies

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[3]It is essential that charter school operators obtain complete information about laws and regulations that apply to the provision of special education, just as they must do for other applicable education requirements. Relevant materials are available through the department of education in every state. Copies of federal regulations governing the education of disabled students can also be obtained from the U. S. Department of Education's Office of Special Education Programs and Office for Civil Rights.

and their impact on students with disabilities for several years. They have identified issues in three areas: outcomes, implementation, and demographics (Ysseldyke, Thurlow, & Nathan, 1991; Lange, 1995). Their examination of other options and related issues addresses what happens to students with disabilities when school choice policies are implemented.

The results of this research on Minnesota's open enrollment, postsecondary enrollment option, and second chance option indicate that students with disabilities and special needs are accessing school choice options in numbers equal to or greater than the proportion of special needs students in the state. Currently, over 10 percent of students participating in Minnesota's open enrollment option are students with disabilities. Nearly 30 percent of students enrolling in Minnesota's alternative schools through the second chance school choice option for at-risk secondary students are students who have received special education services (Lange & Lehr, 1997). Likewise, nearly six percent of students enrolling in postsecondary institutions through the postsecondary enrollment option are students with disabilities (Lange & Ysseldyke, 1992). If charter schools follow the same path, there are, and will continue to be, significant numbers of students with disabilities enrolled in these schools of choice.

Currently, researchers with the Enrollment Options Project are reviewing Minnesota charter school legislation and special education implementation. Preliminary findings indicate that many charter schools do not have a formal plan in place for serving students with disabilities when they begin operation. There are so many competing interests in the early years of operation that special education is being implemented as the school evolves. A research report, published by the Minnesota House of Representatives, notes the problems charter schools encounter when considering special education. "Charter schools faced two problems in terms of special education: many were unfamiliar with the special education funding process, and they were unprepared to provide assessments and services needed. Some charters simply assumed that the resident district would provide any services they required" (Urahn, 1994, p.48).

A review of special education in Colorado's charter schools (McLaughlin, Henderson, & Ullah, 1996) found there to be confusion about special education provisions particularly in the area of waivers for services. "State legislative provisions certainly govern access, but language pertaining to what can and cannot be waived, as well as what charter schools are obligated to consider for special education students and other special populations is often ambiguous" (p. 45). McLaughlin et al. point out the difficulty that emerges when schools are chartered to provide new and innovative educational delivery services. They suggest that

"information and support [to charter schools] not impinge on the governance of charter schools nor disrupt the balance between regulation and autonomy" (p. 49). Yet, they also note that charter schools need considerable information about special education in order to provide the best services possible for special needs students.

Szabo & Gerber (1996), in an article discussing special education issues and charter schools, note that there are several special education issues that need to be considered when charter schools begin operation. These include:

- resources available to charter schools to implement the Individuals with Disabilities Education Act (IDEA) that requires a free appropriate public education for students with disabilities;

- availability of special education professionals to serve in charter schools and implement the IDEA provisions;

- mandated testing and evaluation concerns.

Individuals involved in the development or monitoring of charter schools have several issues to consider as they determine special education services. Three questions summarize the major areas:

1) *Who is responsible for special education services?*

Who takes responsibility for the delivery of special education service within a charter school may vary depending upon the state or even the school district in which the charter school is located. In some cases, the charter school may find itself totally responsible for identification, assessment, and service delivery tasks. In other cases, these are deemed the responsibility of the sponsoring or host district. In yet other cases, responsibility for these services may be negotiated with the host district.

2) *How are special education services delivered?*

Determining how the charter school's educational delivery model integrates with special education services is one of the issues to be considered. One of the first issues to address is whether the delivery model for special services is aligned with the charter school's mission and goals. In addition, charter school operators must determine who will deliver

special education services, under what instructional model the services will be delivered, and where the services will be delivered. Central to this process is understanding how special education laws will be implemented within the context of the charter school. It is essential charter school operators understand federal and state special education laws and regulations as they consider service delivery issues.

3) How are special education services funded?

In order to receive payment for special education services, charter schools must be aware of the requirements and the procedures for obtaining funding. As noted by the Great Lakes Regional Resource Center (1995):

> Funding special education students is a complex process. Often when a charter school is set up, the administrators are not familiar with the rules governing special education funds. They may have to hire someone to teach them the process. Also, many times they are not aware of the costs of testing and evaluating these students. The money may not be supplied by the resident district, depending on the law, but charter school administrators may not be aware of this until later (p. 2).

Each of these questions must be addressed when considering opening and operating a charter school and implementing programs for special needs populations. Answers to the questions will affect how special education is delivered at individual charter schools. The answers, however, may differ depending upon an individual school's charter, the charter school law, or negotiated arrangements.

The remainder of this handbook provides information on issues that may arise when charter school staff and parents consider special education. It begins with a brief background on special education law. Then, the remaining material is presented in question-and-answer format to enhance access and clarity. Additional information on some specific points in the law are contained in a series of *Endnotes* that begin on page 31. This document is offered in the hope that understanding the issues and the laws protecting the rights of students with disabilities will help those involved to avoid preventable problems in charter school program planning and implementation.

A BRIEF HISTORY OF SPECIAL EDUCATION

Access to equal educational opportunity and due process was a hard fought battle for children with disabilities and their families. Educational opportunity for children with disabilities has changed dramatically due to court and legislative rulings and initiatives. As charter schools implement programs and services for students with disabilities, it is important to understand why the protection is so valued and important to children with disabilities and their families.

For most of the nation's history, children with disabilities were not given a right to the same educational opportunities as their nondisabled peers. Children with disabilities could be excluded from a public education, and it was not until the 1950's that educational practices that had been in place for more than a century were successfully challenged. In 1954, the Supreme Court's ruling in *Brown v. Board of Education* set aside the doctrine of "separate but equal." In the late 1960s and early 1970s, several federal and state court decisions struck down state laws that denied an equal educational opportunity to students now covered by federal disability laws. These cases followed the Supreme Court's reasoning in *Brown* and applied it in invalidating such laws. "The Court's legal reasoning laid the groundwork for establishing an equal education opportunity for children with disabilities" (Fiedler & Prasse, 1996, p. 30).

Legal findings were in place to challenge the status quo and provide an equal education opportunity for students with disabilities. Three cases proved to be crucial to the interpretation of the earlier ruling (Fiedler & Prasse, 1996; Hunt & Marshall, 1994; Heward & Orlansky, 1992). These cases, brought forth in the 1960's and early 1970's, provided a clearer interpretation of the educational rights of children with disabilities. In 1969, *Wolf v. Legislature of the State of Utah* was the first major case challenging a state's practice of denying children with disabilities access to a public education. In *Wolf*, a parent sued the state of Utah on behalf of their 12 year old daughter who was identified as having mental retardation. The parents sued the state for denying their daughter access to a public education. The court decided in favor of the Wolfs and "described education as a fundamental and inalienable right and concluded that segregation of [their daughter] from the public school system had a detrimental effect on her and others like her" (Fiedler & Prasse, 1996, p.31).

A landmark case {*see Endnote #1*} on the road to providing public education to children with disabilities was *Pennsylvania Association for Retarded Citizens (PARC) v.*

Commonwealth of Pennsylvania (1972). Parents of 13 children with mental retardation brought suit against the Commonwealth of Pennsylvania on behalf of all persons with mental retardation in the state between the ages of six and 21. They argued that the exclusion of these children from public education was a violation of the equal protection and due process clause of the Constitution's 14th Amendment. The court ruled in favor of the parents and "established that children with disabilities could benefit from an education and that the state was obligated to provide that education. It further recognized that procedural due process was a necessary part of delivering the program, in that the process of classification could result in harm to a child" (Fiedler & Prasse, 1996, p. 32).

That same year another case was decided that applied to all children with disabilities, not just those with mental retardation. *Mills v. Board of Education of the District of Columbia* (1972) was brought on behalf of seven school-aged children and on behalf of thousands of other children who were not receiving access to education in the District of Columbia. The parents of 12 year old Peter Mills (the named plaintiff) brought suit against his school district claiming he was not provided due process as a result of exclusion from his elementary school based on alleged behavior problems. The court found the school district in violation of its own statutes and regulations in failing to provide publicly supported specialized education. It was in this case that the phrase "equal educational opportunity" was first used for individuals with disabilities. "Once again, differential treatment--separation or otherwise--that effectively resulted in the denial of a free and appropriate public education to individuals with disabilities was struck down by the court as unconstitutional" (Fiedler & Prasse, 1996, p. 33). In response to these and other court rulings, Congress took action through legislation that encouraged states to provide or expand programs for students with disabilities. Through a series of education laws passed in the 1960's and 1970's, Congress addressed some of the issues being raised in the courts. The importance of providing an education to all students, regardless of disability status, was being recognized.

In 1975, Congress enacted Public Law 94-142, the Education for All Handicapped Children Act, requiring states to adopt goals ensuring full educational opportunity for children with disabilities as a condition for receiving federal funds. This law was designed to provide full educational opportunity for children with disabilities, and it outlined the procedures for delivery of services in public school systems. It has since been renamed the Individuals with Disabilities Education Act (IDEA) with modifications added through the years. Although Part B of IDEA is permanently authorized, other parts of the law are currently under reauthorization, and several modifications for Part B are also being discussed.

STATUTORY AND CASE LAW FRAMEWORK

The IDEA, together with Section 504 of the Rehabilitation Act of 1973, serves as the cornerstone of legislation that protects the educational rights of children with disabilities. The IDEA and its Regulations provide the procedural road map for teachers, parents, administrators, and state education agencies as they adopt policies and procedures for educating all students within their states, schools, and school districts. Understanding IDEA and the legal concepts that are the foundation of the law is essential for all charter school operators as they contemplate providing special education services.

What are some of the major legal concepts that should form the basis for delivering special education at charter schools pursuant to IDEA/Section 504?

The following six concepts underlie special education statutes, regulations, and case law (Fiedler & Prasse, 1996):

➤ *Zero Reject*

"All children are to be afforded an equal education opportunity and states may not deny an education on the basis of a disability" (Fiedler & Prasse, 1996, p. 37). Although there are some variations based on state law, this principle generally applies all children beginning at age three through age 21 inclusive.

➤ *Individualized Education Program*

The IDEA requires that a written statement called an Individualized Education Program (IEP) must be developed in accordance with IDEA regulations for all students identified as having a disability and receiving special education services. In general, the IEP includes current educational level, annual goals, specific educational objectives, special education and related services to be provided, dates for initiation of service, anticipated duration of service, and evaluation criteria. Under certain circumstances, there are other requirements such as a plan for transition services. (Specific regulatory language on the content of the IEP is contained in *Endnote #2.)*

➤ *Free Appropriate Public Education (FAPE)*

What is deemed "appropriate" is not specifically defined in IDEA. Court decisions over the years have helped define appropriate in specific instances. What constitutes an appropriate program for an individual student is to be determined on a case-by-case basis

depending on the unique needs of that student. Through due process procedures, both parents and school districts may challenge what the appropriateness of a special education program for an individual child.

➤ *Least Restrictive Environment (LRE)*

The IDEA provides that students with disabilities must be educated to the maximum extent appropriate with their nondisabled peers. The law {*see Endnote #3*} expresses a preference, not a mandate, for educating students with disabilities in regular classes with appropriate supplementary aids and services. Several court decisions (*Daniel R.R. v. Texas State Board of Education,* [1989]; *Oberti v. Bd. of Educ. of the Borough of Clementon)* have construed the LRE provision and have enumerated three factors to consider when determining whether a placement is appropriate. They are:

a) a comparison between the educational benefits available to the disabled student in the traditional classroom with appropriate supplementary aids and services, and the benefits available to that student in a special education classroom;
b) the non-academic benefits to the students with a disability from interacting with nondisabled students; and,
c) the degree of disruption of the education of other students resulting in the inability to meet the unique needs of the disabled student.

➤ *Due Process and Parental Involvement*

Due process considerations are central to the implementation of IDEA. Parents must be notified of the intent to evaluate their child for services, and they must consent to an initial evaluation before it begins. They must also be involved in the IEP process and provide consent to the initial placement. Consent means parents have been fully informed in their native language or other mode of communication, understand and agree in writing to the plan and the release of specific records, and understand that consent is voluntary. As in other instances, state special education laws sometimes add to the federal requirements.

➤ *Nondiscriminatory Evaluation*

There are specific legal requirements that have been put in place concerning the evaluation of children. It is important to understand that IDEA requires that tests and other evaluation materials:

- are provided and administered in the child's native language or other mode of communication;
- have been validated for the specific purpose for which they are used;
- are administered by trained personnel;
- include those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient; and,
- accurately reflect the child's aptitude or achievement and not reflect the child's impaired sensory, manual, or speaking skills.

What is the law concerning educating students with disabilities?

Special education is governed by both federal and state laws. There are two federal laws with implementing sets of regulations that govern the provision of special education for students with disabilities.[4] The following is a summary of the major points of the federal laws.

Section 504 and the ADA

In addition to IDEA, there are two federal laws enforced by the U. S .Department of Education's Office of Civil Rights (OCR) that govern the provision of educational services to students with disabilities. Meeting the requirements of these laws is a condition of receiving any federal financial assistance including IDEA funds. *Section 504* prohibits discrimination on the basis of disability by recipients of federal funds. The Section 504 regulation contains free appropriate public education requirements that are similar to the IDEA Part B requirements. In addition, Title II of the *Americans With Disabilities Act of 1990 (ADA)* extends Section 504's prohibition against discrimination on the basis of disability to all activities of state and local governments, whether or not they receive federal funds. This includes school districts that receive federal funds as well as entities such as public libraries that do not receive federal funds. Individuals who may not be eligible for services under IDEA still may be covered by Section 504 and ADA, and school districts may be required to extend the protections of those laws to students covered by those laws who attend charter schools.

[4]It is also important that charter school personnel be familiar with their state's specific legislation and regulations for special education programs and services. For the most part, state rules mirror federal requirements, but some states have additional components or have expanded the specifications of the federal mandates.

Individuals with Disabilities Education Act (IDEA)

Public Law 94-142 or The Education of All Handicapped Children Act was passed in 1975 and, with its implementing regulations, went into effect in October of 1977. The major purposes of the law are:

- To guarantee a "free appropriate public education," including special education and related services designed to meet the unique needs of all children and youth with disabilities.

- To assure the rights of children and youth with disabilities and their parents or guardians are protected (e.g., fairness, appropriateness, and due process in decision-making about providing special education and related services to children and youth with disabilities).

- To assess and assure the effectiveness of special education at state and local levels of government.

- To financially assist the efforts of state and local governments in providing full educational opportunities to all children and youth with disabilities through the use of federal funds.

The IDEA provides federal funds to assist states and localities in the education of children with disabilities. In order to receive the funds, states must assure that:

- All children and youth with disabilities have available to them a Free, Appropriate Public Education (FAPE).

- Education will be based on a complete individual evaluation and assessment with nondiscriminatory evaluation and placement procedures.

- An Individualized Education Program (IEP) will be provided for each child being served in special education.

- Children will be educated in regular classes with appropriate supplementary aids and services to the maximum extent appropriate.

- Parents must give consent for an initial evaluation and initial placement, be notified of any change in placement that may occur, and be invited, along with teachers, to conferences and meetings to develop individual education programs.

- Parents have the right to initiate a due process hearing to challenge a decision regarding the identification, evaluation, or educational placement of their child. A decision may be appealed to either a higher hearing level (if the state has a two-tier due process system) or to an appropriate state or federal court.

- Parents have the right to examine their child's education records. IDEA contains confidentiality requirements that are modeled after those in the Family Educational Rights and Privacy Act of 1974.

- School systems will carry out a systematic search (referred to as child find) for every child with a disability in need of public education.

- Clear communication to parents that education and related services are provided at no cost to them. {*See Endnote #4*}

- Evaluations are not based on a single testing instrument.

- Emphasis must be placed on educating children with their nondisabled peers to the maximum extent appropriate (NICHCY, 1991).

The most substantial changes in the IDEA since original passage have been the additional eligibility of infants and toddlers through Part H added in 1986, and provisions on transition services added in 1990.

How is a disability defined under IDEA?

IDEA law and regulations specify 13 categories of disabilities which are:

- mental retardation
- hearing impairments, including deafness
- speech or language impairments
- visual impairments, including blindness
- serious emotional disturbance
- orthopedic impairments

- autism
- traumatic brain injury
- other health impairments
- specific learning disabilities
- deaf-blindness
- deafness
- multiple disabilities.

A description of each of these disability categories can be found in the glossary of terms in Appendix B.

What steps must schools follow to provide special education services to a student with a disability?

The following is a summary of the general steps that are prescribed by IDEA for providing educational services to a child with a disability.

Preplacement Evaluation:

A preplacement evaluation is conducted when a student is suspected of having a disability and must be a full and individual evaluation of the student's unique educational needs. As mentioned above, parental written consent must be obtained before an evaluation can be conducted. A notice must include what is being proposed, reasons for proposal, evaluation procedures, and an explanation of parent rights and procedural safeguards. An evaluation may be requested by parents, students, or school personnel.

Evaluation Process:

Evaluations must be conducted by a multidisciplinary team. The team must include at least one teacher or other specialist familiar with the suspected disability. The results of the evaluation must be based on more than a single procedure or assessment and tests must not be racially or culturally biased. The student must be assessed in all areas related to the suspected disability. These related areas must include if appropriate: health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Evaluation Results:

Results from assessments are reviewed by the team to determine eligibility for special education and related services. After eligibility is determined, parents must be invited to meet with school personnel to discuss the results and the IEP.

What is an individualized education program (IEP) and how is it implemented?

The term IEP as used throughout this document has two main parts: the meeting where decisions are made about the program for the student, and the written statement of the decisions reached at that meeting. It is the blueprint for action. Every child receiving special education services is required to have an IEP. The written IEP has two purposes:

1) to establish learning goals for the child, and
2) to specify the instruction and services the school district will provide.

After it has been established that a child is eligible for special education, a team consisting of teachers and parents meets to determine the IEP for the student. Each of the areas listed below is covered in the meeting. This meeting is particularly important to ensure that the student's needs are discussed fully by parents and school personnel so that informed decisions can be made about the instruction and services to be provided to the child. An individualized education program (IEP) will include information about the following (Hunt & Marshall, 1994; Heward & Orlansky, 1992):

Current educational performance: Multiple assessments that are without cultural or racial bias must be conducted to measure current educational performance during the evaluation process. The results of the assessments are presented at the IEP meeting.

Specific special education and related services: It is in the process of developing the IEP that the staff, parents, and students (age 16 and older, younger if appropriate, when the meeting includes consideration of the need for transition services) determine what services will be provided and how they will be provided. The school is responsible for providing services that become part of the IEP until those services are no longer listed on the IEP. It is up to the IEP team to decide what, how, where, and by whom services will be provided. The school is not restricted by any particular model for the delivery of services. However, the child's educational program must be provided in the least restrictive environment, that is, the educational setting must be one where the child with a disability can be appropriately educated with students without disabilities to the maximum extent appropriate. If a setting other than the regular classroom is determined appropriate for the student, the setting chosen should be one that maximizes opportunities for interaction with nondisabled peers.

Annual goals including short-term instructional objectives: Goals and objectives are usually determined at the IEP meeting, and staff are assigned responsibilities for meeting the goals

and objectives. This provides an accountability system for the child and the parents to ensure the IEP decisions are acted upon. {*See Endnote #5*}

Starting date and duration of services: The starting date of services must be as soon as possible after the IEP meeting. Subsequently, IDEA requires that a meeting be held at least once a year to review and, if appropriate, revise each student's IEP.

Measuring the accomplishment of short-term objectives: Participants at the IEP meeting also determine how the short-term objectives will be measured. This is important for parents and the students to know, as it provides an expectation of how the student's outcomes will be assessed.

After an IEP as been established, school personnel must provide the instruction and services agreed upon at the meeting. There is a wide range of models for serving students with disabilities. They can range from consultation in the classroom by a special educator, to a pull-out program such as a resource room, or special class for tutoring, or small-group instruction, to a placement in a specialized school. (See *Endnote #6).*

It is important to note that federal and state law do not make schools or teachers liable for achieving goals included in the IEP, only for providing the services prescribed in the document. This is an essential distinction that illustrates the importance of a clear understanding of applicable law by charter school personnel.

What are related services?

Related services are supportive services to assist a child with a disability to benefit from special education. Related services and, if indicated, the need for assistive technology devices (e.g., an item, piece of equipment, or product used to increase, maintain, or improve functional capabilities of children with disabilities) are also determined at the meeting and listed on the IEP. If related services are required, the school must provide these services. Related services may include:

- audiology
- psychological services
- physical therapy
- occupational therapy
- medical services for diagnostic or evaluation purposes only
- school health services

- recreation, including therapeutic recreation
- counseling services, including rehabilitation counseling
- early identification and assessment of disabilities in children
- social work services in schools
- transportation
- speech and language services
- parent counseling and training.

Are students with disabilities re-evaluated?

A review is conducted once a year at which time the IEP is reviewed and a new IEP is written for the next year. In addition, students with an IEP must be evaluated at least every 3 years after placement in special education. Re-evaluations will be conducted more frequently if requested by the teacher, staff, or parents or if conditions warrant.

What if parents do not want their child to receive special services or disagree with the recommended services?

Parents can deny permission to have their child evaluated or to place their child in special education by denying consent in writing and submitting it to the school. States have established procedures for schools and school districts to follow if school personnel want to pursue the recommended evaluation or placement despite parental opposition. Parents must be notified if the school decides to continue seeking placement.

If parents disagree with recommended instruction and services and the individualized education program cannot be agreed upon through the IEP process, parents can 1) consult with staff members about the IEP; 2) request an IEP review; 3) go through a negotiation or mediation with the school; 4) initiate an impartial due process hearing; or , 5) use the state complaint procedures (NICHCY, 1993).

What about discipline?

There is currently considerable debate over discipline procedures for students with disabilities. In April 1995, OSEP issued a memorandum containing *Questions and Answers on Disciplining Students with Disabilities* (OSEP-95-16) to provide guidance about IDEA , Section 504 and ADA requirements that are relevant to discipline issues. In addition, many states have established specific conditions under which students with disabilities may be

suspended in their school districts. Charter school personnel should be aware of applicable federal and state regulations when considering disciplinary action for a student with a disability. Also, discipline procedures for students with disabilities are currently being addressed in Congress under IDEA reauthorization that may change future handling of discipline issues.

What are transition services and how are they implemented?

The requirement for needed transition services for students with disabilities beginning at the age of 16 (or, if appropriate, for students under age 16) was a significant addition when IDEA was amended in 1990. IEPs must state the transition services needed to prepare the student for transition from school to postschool world. The responsibilities of the school and outside agencies for providing or paying for transition services must be delineated on the IEP. Transition services are defined as "a coordinated set of activities for a student, designed within an outcome-oriented process, that promote movement from school to post-school activities, including:

- postsecondary education
- vocational training
- integrated employment (including supported employment)
- adult services
- independent living
- community participation.

How is special education funded?

The federal government pays only a small portion of special education costs (Parrish, 1996). State and local funds support the bulk of the education of children with disabilities. The manner in which these funds are received by schools and school districts varies by state.

It is imperative for charter school operators to learn how special education funds are handled in their state. They must determine what conditions they must meet in order to receive special education funds, and how special education funds are disbursed to the school or school district. Payment of special education funds usually involves considerable documentation of services, personnel, and related services. Setting up a resource management system is essential when dealing with the reimbursement of special education funds. Whether the state or host district can assist in this process will be determined by the state law or by the relationship between the charter school and the host district. Some charter

schools have hired consultants to assist in the development of a system for fund reimbursement. It can be quite complicated and time consuming, and the advice of an experienced special educator or business manager can save the charter school considerable time and resources.

Many services, including the cost of consultants, are allowable expenditures with IDEA funds. Understanding which expenses can be reimbursed, at what rate, and what needs to be documented is an essential part of operating a charter school. It is always important to remember that the intent of state and federal law is to ensure that children and youth with disabilities receive a free appropriate education. The funds available through the federal and state governments are intended to assist schools in meeting federal and state requirements.

What are the essential components of a special education program that charter schools should consider?

Below is a summary of 15 general components that may be helpful for charter schools to consider when establishing special education services for students with disabilities (Minnesota Department, 1996, p. xvii). These are listed as a starting point for staff and parents at charter schools as they begin the process of providing a free appropriate public education for all eligible students. Whether these components are available within the charter school or in conjunction with a school district or state education agency will generally depend upon the charter school law in each state or the specific provisions of each school's charter.

Identification: the continuous and systematic effort to identify, locate, and screen students birth through 21, who are in need of special education services.

Referral : a formal, ongoing process for reviewing information related to students who are suspected of having disabilities and show potential signs of needing special education and related services. Assessment referral is the process of looking at a student's screening information and making a decision about whether or not to conduct a formal educational assessment.

Assessment or reassessment: the process of utilizing formal and informal procedures to determine specific areas of a person's strengths, needs, and eligibility for special education services.

Individualized education program (IEP) planning: the process of determining a pupil's educational needs, based on assessment data, and completing a written IEP program.

Instructional delivery of programs: the system the local education agency (LEA) uses to ensure that a *continuum of alternative placements* is available to meet the needs of pupils with disabilities for special education and related services.

Staffing: refers to the identification of the required and qualified personnel to deliver the prescribed program according to a pupil's needs.

Facilities: the actual locations of schools and classrooms and the settings of classrooms within the schools which allow pupils with disabilities access to programs and interactions with students who do not have disabilities.

Parent involvement/due process: refers to the parental rights and responsibilities, according to state and federal laws, rules, and regulations, in all aspects of acquiring, developing, planning, and implementing special education and related services for pupils with disabilities and any legal challenges to any aspect of a free appropriate public education.

Personnel development: the structure for personnel planning that focuses on preservice and inservice needs in order to plan a program to meet the needs of pupils with disabilities.

Interagency relations: refers to the collaboration and coordination of agencies to provide services to pupils with disabilities.

Transportation: the physical movement of pupils with disabilities between homes and instructional facilities for both regular and special education programs and activities.

Instructional resources: refers to the specific supplies, equipment, and instructional materials appropriate to meet the needs of individual pupils with disabilities.

Coordination with other educational programs: the process that schools or districts use to provide special education within the context of all other educational programs. Included is an array of programs, some of which are state mandated educational programs and others which are federally mandated educational programs.

Fiscal resources: the means for purchasing and/or obtaining the supplies, materials, equipment, services, and personnel required to provide programs for pupils with disabilities. *Reporting* refers to the financial accounting that must be submitted to state and federal agencies, and supporting documentation that provides the required information for an audit.

Governance: the administrative structure and long range plans through which the special education system operates.

What about laws pertaining to school choice and special education?

Since there are no laws or decisions that detail the relationship between special education and charter schools, cases pertaining to the participation of students with disabilities in similar structures and arrangements such as school choice options, open enrollment and intradistrict choice programs, can be informative. Based on three cases brought before the Office of Civil Rights that involved the denial or lack of special education services in alternative schools, a magnet school, and an intradistrict choice plan, McKinney and Mead (1996) maintain that school choice programs must consider students with disabilities and the availability of a free and appropriate education. These authors conclude, "Students with disabilities must be given access to intradistrict-choice programs and services. Schools cannot legally exclude or enforce eligibility standards that categorically exclude 'otherwise qualified' students or groups of students from intradistrict-choice programs" (p. 115). They list four principles of meaningful choice that should be followed to be in compliance with current laws (p. 125):

1) Disability status cannot be used as a criterion for noneligibility in the choice program. [Section 504];
2) State education agencies and school districts involved in choice must recognize that their obligation under both Section 504 and the IDEA to provide eligible children with FAPE [free appropriate public education] cannot be abrogated by allowing parents the latitude to choose schools. [16 *EHLR* 554, 1990];
3) Reasonable steps must be undertaken to ensure that the choice system as a whole makes available a broad range of specialized services and programs to provide FAPE. [*Alexander v. Choate*]; and,
4) Procedures used for parents to elect choice must not create any diminishment of the procedural rights guaranteed under either Section 504 or the IDEA. [16 *EHLR* 554, 1990].

ISSUES FOR CHARTER SCHOOLS IN THE IMPLEMENTATION OF SPECIAL EDUCATION

Charter schools are forging new territory in education and there are issues that arise when considering special education in this new educational entity. How charter school laws and special education laws interact and are implemented raise several issues for persons operating or contemplating opening a charter school. The State Education Agency (SEA) has the ultimate responsibility for assuring the provision of a free appropriate education for each student with disability who resides in that state. Although clarification is needed on issues related to federal special education policy, charter schools must rely on the SEA for responses concerning the application of federal and state policy in specific cases.

Below are a list of questions that those associated with charter schools should consider as they design and implement their schools. There are no conclusive answers to many of the questions presented below. In some cases, specific answers are not yet available; in other cases, the answer depends upon a state's charter school law. They are, however, important issues, and their careful consideration may help charter schools find appropriate direction for the proper implementation of special education.

What is the philosophical orientation of the school toward serving students with disabilities?

By their very nature, charter schools have a particular orientation toward the delivery of educational services that may be manifested in a specific curriculum, student population, or parent focus. Even before opening, charter school personnel need to ask themselves how they intend to serve special needs populations and how their school mission aligns with their vision of special education. Laws protecting the rights of students with disabilities do <u>not</u> prescribe a particular service delivery model. As discussed in the previous section, what is important is that the school follow the basic requirements delineated in IDEA and assure that there is no discrimination for educational service based on disability status. If IDEA provisions are followed, a charter school can develop a model for special education delivery that is both legally defensible and in line with their mission.

Ideally, special education should be considered early in the process so as to align the school's mission for all students. Viewing special education within the context of the charter school's mission will help define the special education delivery model and may move the whole

school toward a more innovative model of educational delivery. Some of the questions that charter school operators should ask themselves at this stage are:

- Are opportunities available for students with disabilities to receive services within the innovative model available for students without disabilities?

- Can charter schools use their independent status to create innovative models of special education service delivery within the scope of IDEA?

How will staff identify and serve students with special needs?

It is important that the charter school has a process in place for the identification of students with disabilities and the provision of services as contained in each IEP for those students who enroll and already have an IEP. On this point, charter schools must respond to:

- Who is responsible at the school for identification?
- How will students be evaluated?
- What role will the host or sponsoring school district play in identification of students with disabilities?
- How will the charter school deal with an IEP written by another school or school district?
- Who will make decisions about special education services?
- Will a multidisciplinary team be in place prior to school opening to deal with preevaluation questions and concerns?

Who is responsible for serving students with disabilities?

Those interested in opening a charter school should determine how the law is being interpreted in their state with regard to responsibility for serving students with disabilities. Responsibility may lie with the charter school, the host district, or some other educational entity. Whether it is required or not, this issue is best addressed in the school's mission statement and/or initial operating plan. If the charter school is responsible for all services, it must be decided how, by whom, and where service will be delivered, including allocating resources, both in personnel and in funds, to develop the special education program. If the state charter school law allows for negotiated agreements between the charter school and

school districts or other educational organizations, these agreements are best made prior to opening the school to alleviate any confusion over responsibility. Charter school personnel should seek the best advice to determine responsibility of service delivery and have a plan for providing service. Some questions to ask state charter school officials are:

- Who is responsible for the identification of children with disabilities at the charter school?
- Who will provide the assessments?
- Will funds be available to provide these assessments?
- Who is responsible for delivering special education and related services?
- Where will service take place (e.g., If the host district provides services, will it occur at the charter school or in one of the host district's schools)?
- Whose staff will provide service?
- Can the required continuum of services be negotiated with the host district or does the school need to provide all services?
- Will the state agency provide assistance in organizing the special education financial management system?

What steps must charter schools take to ensure that appropriate services are provided to students with low-incidence disabilities?

Some students with disabilities that are considered low incidence (e.g., deafness, blindness, autism, etc.) may enroll in the charter school. Providing services to these individuals, when the school is often small with limited resources, may be difficult. Again, it is necessary to receive clarification from the state education agency about providing service to students with low incidence disabilities. If the charter school does not have access to all the necessary services, arrangements may be made for working with the host or sponsoring district. The importance of having an evaluation team in place to consider identification and program questions is again apparent. Often charter schools do not have special education staff. It may be in their best interest and the best interests of the students with and without disabilities for schools to consider special education teachers as part of their personnel team or consultative staff. A knowledgeable special educator can help answer these questions or ask state personnel necessary questions about special education service.

Who pays for the services?

Who pays for the services associated with the education of students with disabilities is often at issue and varies from state to state. "There is generally no mechanism specified in law for these schools to share costs or personnel with other district schools or to draw upon the expertise of district staff members who specialize in special education assessments and funding" (Buechler, 1995, p. 31). It is extremely important for charter schools to communicate with the host or resident school district when determining special education services. Since federal and state funds often do not cover the total costs of implementing an IEP, charter schools may be left with the responsibility of covering the excess costs. If the charter school has negotiated services or payment for services prior to operation and has planned for the management of the funds, many potential problems can be avoided. If the charter school staff or designated consultants are not familiar with special education funding requirements and the linkages between other federal and state funding sources (e.g., Title 1), they may lose a considerable amount of financial resources that are necessary to operate the school efficiently. The funding of special education is complex and frustrating for those without experience in the area. It would be extremely helpful for charter schools to receive assistance in this area from either their state education agency, consultant, or staff special educator.

How will transportation needs be met?

Some students with disabilities have transportation services written into their IEP. Determining who is responsible for the costs and logistical arrangements for this transportation is important for charter schools to consider. Does the charter school arrange for transportation? Is transportation the responsibility of the resident district? Are there funds available for the reimbursement of transportation costs? Will these be received at the charter school, or are they paid directly to the transportation provider? Getting the answers to these questions will mean fewer unexpected costs or time burdens for staff.

What personnel certification and licensure issues need to be considered?

One of the issues to be resolved for charter schools is the availability of special education staff. Often related service staff in the areas of speech and language and psychological services are in demand by many schools and districts. Charter school personnel should be aware that they may need to develop relationships with a number of schools, school districts, or consulting personnel to fill their need for specialized staff. Understanding the requirements concerning staff licensure and special education is important for charter school

personnel. IDEA delineates the necessity of a person knowledgeable about the student's suspected disability being involved in the evaluation process. If the charter school does not have a special educator on staff, are there other options available to the school? Can a consultant be hired to do assessments? Are these services reimbursable expenses? What about service delivery? Will consultative services be accepted on the IEP? What if the IEP calls for more intensive services? How will the charter school provide these services without a licensed special educator on staff? Charter schools may want to consider a dual certified staff member (certified in special education and another discipline) or independent contractors.

Can charter schools serve only students with special needs?

Some charter schools are designed for students with disabilities. For example, Minnesota has a school designed specifically for special needs students. The Metro Deaf School provides education in American Sign Language as the first language. Those considering opening charter schools should research their state law and how other states are dealing with specialty charter schools.

Can charter schools receive waivers for certain special education requirements?

The answer to this question is "maybe." Some states allow charter schools blanket waivers from most or some of the state education laws, but a state cannot waive the requirements of IDEA or Section 504. Whether a state waives any of its special education requirements should be investigated by the charter school through contacting the state's charter school office or authority.

What if the charter school has individualized learning plans for all students? Do they still need to complete an IEP?

In order to be in compliance with IDEA, a school must follow the procedures outlined in the IDEA and its regulations. It is possible that those requirements may be met by incorporating the procedures into an individualized learning program for a child with a disability. Again, the specifics of complying with this aspect of IDEA and state law is a topic that should be addressed by charter school operators in consultation with state and district staff.

What if a charter school is not an appropriate placement for a child with a disability?

If a parent seeks to enroll a child with a disability in a charter school, FAPE must be made available to that student at the charter school, or another placement that is appropriate for the student must be offered by the entity responsible for educating the disabled student. If a charter school believes it is not the appropriate placement for the student, it should go through the IEP process providing rationale for the parents and other team members. Through this process, an appropriate educational placement and program can be determined. A preenrollment meeting or IEP review meeting prior to enrollment can assist parents, teachers, and students in meshing the child's needs with the charter school's services.

What if a child's special education needs change after enrollment in a charter school?

Student needs may change after enrollment in a different educational setting. If parents, school personnel, or the student believe that a student no longer requires special education services or the level of services previously provided, an IEP meeting can be initiated or a reevaluation can be conducted. It is through these procedure that program decisions can be evaluated and changed.

Is the charter school legally liable in the area of special education?

In some states charter schools are legally autonomous entities, while in other states they are not. Charter schools need to understand the implications of their legal status, especially how their status relates to issues that might arise for special education. For example, if a parent initiates a due process hearing about a child's program, a charter school may need to expend funds for legal fees. This can be a costly situation for a school with little capital and many needs. As noted is ASCD *Education Update* ("Charter Schools", Nov., 1995)."...issues that cause friction include whether the school or district will be responsible for special education and transportation services, and which entity is legally liable in the case of accidents or lawsuits " (p. 4).

CONCLUSIONS AND RECOMMENDATIONS

A long history of exclusion of children with disabilities from a public education made it necessary to provide a means for ensuring the availability of a free and appropriate education, including applicable due process and procedural safeguards. The laws and regulations now in place were designed to protect the children and their parents, and also provide a guide for ensuring that the education is individually designed and appropriate to the needs of each child with a disability.

This has meant that educators must be aware of the law and the many provisions outlined in the law. For many charter school personnel, this is new territory. They must establish a system for educating all students, regardless of disability status, in their school, often without the assistance of a larger, experienced special education department.

As policymakers consider charter schools and their impact on the educational system, they should be aware of the many questions that are still unanswered concerning the implementation of special education in charter schools. The variation inherent in this new type of school may require new interpretations and added flexibility in the application of specific requirements. Additional guidance is needed for charter school leaders and the sponsors of these schools. How each state answers the questions presented in this handbook may influence other policy decisions. Charter schools may also need additional resources as they implement special education. These resources may be in the area of consultative assistance or actual dollars to design and implement the required provisions of IDEA. The following recommendations and suggestions for charter school personnel and state department agency personnel are offered.

For Charter School Personnel:

- Consider special education and the charter school's philosophical orientation and mission in relationship to staffing, service delivery, inclusion practices, etc. when writing the proposal or planning the school's goals and objectives.
- Outline special education policies prior to opening the school.
- Contact state education agency personnel and ask about all aspects of special education, especially the state charter school and special education laws.

- Determine how special education funding works early in the process of developing the charter school to avoid delays in receipt of funds due to lack of information.

- Determine who will provide special education services prior to opening the school. For a school already in operation, prompt investigation of this issue is essential.

- Consider using an outside consultant or hiring a staff person to assist in setting up evaluation teams, procedures, and financial reimbursements.

- Be consistent in the delivery of educational services for all students and be innovative in special education also. The laws do not prescribe specific service delivery strategies nor do they preclude new ways of service delivery.

For State Agency Personnel:

- Be prepared to answer questions regarding special education services. Assign a staff person or prepare a fact sheet to assist charter schools in this area.

- Have information available for charter school personnel that can help them understand the complex topic of special education funding and explain what they need to know.

- If the state education agency cannot provide direct service to charter schools, provide a list of consultants that might be able to assist them on special education issues.

- Develop coordinated guidelines with the state's special education department, the charter school office or contact person, and other related departments for service specific to the state. School districts and charter schools need to know what is expected of them.

This handbook has summarized the charter school movement, the issues that arise when charter schools consider special education and students with disabilities, the rationale behind the laws protecting students with disabilities, and many of the procedures necessary to ensure equal educational opportunity. There are many challenges in starting a new school in areas such as curriculum, finance, enrollment, staffing, etc. Special education and its implementation is another challenge faced by staff as they open and operate a charter school. The information presented here is intended to assist charter school operators in knowing the questions to ask and the issues to consider as they begin planning their schools and programs. Students with disabilities and special needs will be enrolled in charter schools as in all schools across the country. By knowing more about the laws and the issues, charter school operators, teachers, and parents will be better able to meet the unique needs of students with disabilities in this new type of school.

ENDNOTES

Endnote #1 - The Mills and PARC Cases:

In the legislative history of the Education of the Handicapped Act (EHA) [the predecessor statute to the IDEA], Congress also took particular notice of two Federal court decisions which it termed "landmark." See *PARC v. Pennsylvania*, 334 F. Supp. 1257, 343 F. Supp. 279 (E.D.PA 1972) ; and *Mills v. Board of Education of the District of Columbia* 348 F. Supp. 866 (D.DC 1972) ; S. Rep. No. 168, 94th Cong., lst *Sess.* 6 (1975). In PARC, the court found that, having undertaken to provide free public education to all of its children, the Commonwealth of Pennsylvania could not deny any mentally retarded child access to a free public program of education. In Mills, the Board was enjoined from denying publicly supported education to children who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive. The court in Mills ordered "that no child eligible for a publicly supported education in the D.C. Public Schools, including children suspended or expelled, be excluded from a regular public school ... unless such child is provided (a) adequate alternative educational services suited to the child' s needs, which may include special education or tuition grants, and (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative. 11 Id. at 878. These cases have had a significant impact on the rights and protections currently in place in Federal law for disabled students.

Endnote #2 - IDEA §300.346 Content of individualized education program:

(a) General. The IEP for each child must include --

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) Transition services. (1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public

agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in §300.18(b)(2)(I) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.
{Authority: 20 U.S.C. 1401(a)(19), (a)(20); 1412(2)(B), (4), (6) ; 1414 (a) (5)}

Endnote #3 - Least Restrictive Environment:

Part B requires that, to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This statutory requirement expresses a preference, not a mandate, for educating children with disabilities in regular classes alongside their nondisabled peers with appropriate supplementary aids and services. The overriding rule in placement is that each student's educational placement must be determined on an individual basis in light of his or her unique abilities and needs. Several court decisions construing Part B's LRE provisions have been instructive: *Daniel R.R. v. Texas State Board of Education (5th Cir.) (1989) and Oberti v. Bd. of Educ. of the Borough of Clementon* (3rd Cir.) (1993). In determining if a placement is appropriate under Part B, the following factors are relevant:

- the educational benefits available to the disabled student in a traditional classroom, supplemented with appropriate aids and services, in comparison to the educational benefits to the disabled student from a special education classroom;
- the non-academic benefits to the disabled student from interacting with nondisabled students; and,
- the degree of disruption of the education of other students, resulting in the inability to meet the unique needs of the disabled student.

Endnote #4 - Confidentiality:

Parents have the right to examine their child's education records. IDEA contains confidentiality requirements that are modeled after those in the Family Educational Rights and Privacy Act of 1974 (FERPA). While FERPA does not protect the confidentiality of information in general, it prohibits the improper disclosure of information from education records and generally protects parents' and students, privacy interests in "education records." Information from education records may not be disclosed to third parties without obtaining the prior written consent of the parent or eligible student over eighteen years of age, unless

one of the exceptions to the prior written consent requirement is applicable. For a further discussion of confidentiality of information requirements, see NICHCY News Digest No. 15, (1991).

Endnote #5 - Interpretation of Requirements of Part B of the Individuals with Disabilities Education Act:

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting (s) , where parents and school personnel jointly make decisions about an e d u c a t I o n a 1 program for a child with a disability, and (2) the IEP document itself, that is, a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.
b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning the special education needs of a child with a disability; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.
c. The IEP sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services.
d. The IEP is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's special learning needs.
e. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the parents and the school.
f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Endnote #6 - Continuum of Alternative Placements:

There is a requirement in the IDEA regulations that public agencies make available a continuum of alternative placements to meet the needs of children with disabilities for special education and related services, and that the options on this continuum must be made available to the extent necessary to implement the IEP of each student with a disability

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Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, 34 C.R.R. 104 et seq.

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*Education of the Handicapped Law Report

APPENDIX A: ADDITIONAL SOURCES OF INFORMATION

ADDITIONAL SOURCES OF INFORMATION

Clearinghouse on Disability Information-Office of Special Education and Rehabilitative Services (OSERS)

Room 3132, Switzer Bldg.
330 C Street SW
Washington DC 2020-2524
202-205-8241 (Voice/TT)

Center for Policy Research

National Association of
State Boards of Education (NASBE)
Virginia Roach, Ed.D.
1012 Cameron Street
Alexandria, VA 22314
703-684-4000
703-836-2313 (Fax)

Institute for the Study of
Exceptional Children and Youth
Margaret McLaughlin, Ph.D.
University of MD, 1220 Benjamin Building
College Park, MD 20742-1161
301-405-6495
301-314-9158 (Fax)

Consortium for Policy Research in Education
Margaret Goertz, Ph.D.
University of Pennsylvania
3440 Market Street, Suite #560
Philadelphia, PA 19104-3325
215-573-0700
215-573-7914 (Fax)

Enrollment Options Project

University of Minnesota
350 Elliott Hall, 75 East River Rd.
Minneapolis, MN 55455
612-624-5832 (Voice)
612-624-0879 (Fax)

ERIC Clearinghouse on Disabilities and Gifted Education
Council for Exceptional Children

1920 Association Dr.
Reston, VA 22091-1589
800-328-0272

National Association of State Directors of Special Education

1800 Diagonal Road, Suite 320
Alexandria, VA 22314
701-519-3800 (Voice)
703-519-7008 (TDD)
703-519-3808 (Fax)
SpecialNet: *http://www.lrp.com/index.html*

National Information Center for Children and Youth with Disabilities (NICHCY)

P.O. Box 1492
Washington DC 20013-1492
800-695-0285 (Voice/TT)
202-884-8200 (Voice/TT)
202-884-8441 (Fax)
e-mail: nichcy@aed.org
World Wide Web: *http://www.aed.org/nichcy*

Federal and Regional Resource Centers (maintained by OSEP)

1) **Northeast RRC**
Trinity College of Vermont
802-658-5036

2) **Mid-South RRC**
University of Kentucky
606-257-4921

3) **South Atlantic RRC**
Florida Atlantic University
954-473-6106

4) **Great Lakes RRC**
Ohio State University
614-447-0844

5) **Mountain Plains RRC**
Utah State University
801-752-0238

6) **Western RRC**
University of Oregon
541-346-5641

Federal Resource Center
Academy for Educational Development
Washington, D.C.
202-884-8214

Technical Assistance to Parent Programs (TAPP) Network
National Office: Federation for Children with Special Needs

95 Berkeley St.
Boston, MA 02116
800-331-0688 (in MA); 617-482-2915

Other Web Sites for Charter School Information:

National Charter School Study:

a) OERI National Institute of Educational, Governance, Finance, Policymaking and Management: *http://www.ed.gov/offices/OERI/GFI/gfichart.html*
b) University of Minnesota: *http//carei.coled.umn.edu/CharterSchools/NatChrtr.html*

Charter School Project, Institute for Education Reform, CA State University at Sacramento (Eric Premack): *http://www.csus.edu/ier/charter.html*

Charter Schools Office, Central MI University: *http://pip.ehhs.cmich.edu/chart/*

Charter Schools Research Site, Jude Hollins: *http://csr.syr.edu*

US Charter Schools Web Site: http://www.uscharterschools.org

APPENDIX B: GLOSSARY OF TERMS

GLOSSARY OF TERMS[5]

assessment Process of collecting data to make decisions about students.

autism Developmental disability significantly affecting verbal and nonverbal communication, social interaction, and educational performance; generally evident before age 3.

category In special education, a grouping of exceptional students who are thought to share certain characteristics. Although professionals attempt to standardize the names and definitions of categories, there is significant variation from one state to another.

child-study team Group that determines a student's eligibility for special education and develops an individualized education program (IEP); typically composed of teachers, other representatives of the school district, and the child's parents.

communication disorder Impairment in speech or language that interferes significantly with a person's ability to communicate.

deaf-blindness Category used to provide services to people who are deaf as well as blind. In the federal definition, deaf-blindness refers to "concomitant hearing and visual impairments: that cause such severe problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

deafness Absence of functional hearing in both ears. In the federal definition, deafness means a hearing impairment so severe that the student is "impaired in processing linguistic information through hearing" and the student's educational performance is adversely affected.

direct services Services in which special education personnel (including special education teachers, speech and language pathologists, and other professionals) work with students to remediate difficulties or to provide enrichment or acceleration.

disability Medical, social, or learning difficulty that interferes significantly with an individual's normal growth and development.

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[5]Ysseldyke, James E. and Bob Algozzine, *Special Education: A Practical Approach for Teachers*, Third Edition. Copyright ©1995 by Houghton Mifflin Company. Reprinted with permission.

due process clause The part of the Fourteenth Amendment to the U.S. Constitution that forbids states from depriving anyone of life, liberty, or property without due process of law.

Education for All Handicapped Children Act (1975) First compulsory special education law; mandates a free and appropriate education for all students with disabilities between the ages of 3 and 21. Also called *Public Law 94-142.*

equal protection clause The part of the Fourteenth Amendment of the U.S. Constitution that guarantees "equal protection of the laws" to all.

exceptional students Students who require special education because of their special learning needs. Exceptional students can have disabilities or be gifted and talented.

federal definition Definition of a term derived from U.S. government laws or regulations guiding provision of services to students with disabilities; many current federal definitions are included in the Individual with Disabilities Act.

hearing impairment A hearing problem that adversely affects a student's educational performance.

inclusion Educating exceptional students-regardless of type or severity of disability--in regular classrooms in their neighborhood schools. Also known as *full inclusion.*

indirect services Services provided to regular classroom teachers and others to help them meet the needs of exceptional students; also called *consultative services.*

individualized education program (IEP) A written document that includes (1) a statement of the student's present levels of functioning, (2) a statement of annual goals and short-term objectives for achieving those goals, (3) a statement of services to be prided and the extent of regular programming, (4) the start date and expected duration of services, and (5) evaluation procedures and criteria for monitoring progress.

individualized transition plan (ITP) Part of the individualized education program that specifies services to be provided to aid a student's transition from school to adult life.

Individuals with Disabilities Education Act (1990) A reauthorization and renaming of the Education for All Handicapped Children Act; also includes a definition of transition services and specifications for individualized transition plans.

learning disability Disorder in one or more of the basic psychological processes involved in understanding or using language; may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Often identified by discrepancy between expected and actual achievement. Also called *specific learning disability*.

least restrictive environment Educational setting as much like the regular classroom as possible.

mental retardation Significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior, manifests itself during the developmental period, and adversely affects the individual's educational performance.

multiple disabilities Combination of impairments causing educational problems so severe that they cannot be accommodated in special education programs designed solely for one of the impairments.

orthopedic impairment Deficit in movement and mobility resulting from a congenital anomaly, disease, injury, or other cause and adversely affecting educational performance.

other health impairment Deficit in movement and mobility resulting from a congenital anomaly, disease, injury, or other cause and adversely affecting educational performance.

prevalence Number or percentage of individuals evidencing a condition at a given time.

referral First step in determining a student's eligibility for special education; process of requesting information or a professional evaluation to decide whether a student is eligible for special services.

related services Supplemental services provided by trained personnel to help a student benefit from special education; these services include psychological testing and counseling, occupational therapy, school health services, and transportation.

resource room Room to which a student goes for part of a school day to receive special instruction or help with regular classroom work.

serious emotional disturbance Condition in which a student exhibits one or more of the following characteristics over a long period and to a marked degree, adversely affecting educational performance: an inability to learn that cannot be explained by intellectual,

sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate behaviors or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. Also called *behavior disorder*.

specific learning disability *See learning disability.*

speech or language impairment *See communication disorder.*

traumatic brain injury Acquired injury to the brain caused by an external physical force, resulting in functional disability, psychosocial impairment, or both, and adversely affecting educational performance.

visual impairment Vision problem that, even with correction, adversely affects a student's educational performance.